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09/676,016	09/29/2000	Seth Bradley Noble	004098.P003	3225

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Robert B O'Rourke  
Blakely Sokoloff Taylor & Zafman LLP  
Seventh Floor  
12400 Wilshire Boulevard  
Los Angeles, CA 90025-1026

EXAMINER

COULTER, KENNETH R

ART UNIT

PAPER NUMBER

2141

DATE MAILED: 03/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/676,016

Applicant(s)

NOBLE, SETH BRADLEY

Examiner

Kenneth R Coulter

Art Unit

2141

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-103 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-103 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

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## DETAILED ACTION

### *Claim Objections*

1. Claim 61 is objected to because of the following informalities:

Claim 61 states "The machine readable medium of claim 59", however, claim 59 is a method claim.

Appropriate correction is required.

2. Applicant is advised that should claims 80 and 81 be found allowable, claims 102 and 103 respectively will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b); by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1 – 15 are rejected under 35 U.S.C. 102(e) as being disclosed by Sahai et al. (U.S. Pat. No. 6,594,699) (System for Capability Based Multimedia Streaming Over a Network).

4.1 Regarding claim 1, Sahai discloses a method comprising:

scheduling a data flow adjustment, said data flow between a pair of nodes communicatively coupled by a network, said scheduling responsive to networking performance statistics (Abstract; Fig. 3; col. 6, lines 12 - 52).

4.2 Per claims 2 – 15, Sahai does not explicitly disclose the specifics involving the performance statistics being a window transit time, average delay, arrival rate of expected messages, state of a queue, or threshold specifics.

Sahai does teach that “preferences include, for example, the quality of service of the transfer” (Abstract).

Quality of service, with regard to data transfer between two nodes, commonly includes window transit time, average delay, arrival rate of expected messages, state of a queue, and threshold specifics.

It would have been inherent to include these specifics in Sahai because these specifics are common quality of service issues with regard to data transfer between two nodes.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claims 16 – 103 are rejected under 35 U.S.C. 102(a) as being disclosed by Kalra et al. (U.S. Pat. No. 5,953,506) (Method and Apparatus that Provides a Scalable Media Delivery System).

6.1 Regarding claim 16, Kalra discloses a method comprising:

updating statistics that characterize a transaction over a network between a client and a server so that said statistics reflect an arrival event, said transaction comprising a series of messages sent to said client from said server that each contain their own portion of data that is desired by said client, wherein, said arrival event is the arrival of one of said messages at said client, said statistics being maintained by said client (Fig. 15A; Fig. 15C, item 554A; col. 17, line 65 – col. 18, line 9; col. 18, lines 46 - 51); and inquiring at said client whether increasing the information flow of said transaction is appropriate in light of said arrival event (Fig. 15C).

6.2 Per claims 17 - 37, Kalra does not explicitly disclose the specifics involving the performance statistics being a window transit time, average delay, arrival rate of expected messages, state of a queue, or threshold specifics.

Kalra does teach that “the streams accessed from the server are tailored to match the profile of each client computer” (Abstract).

A profile, with regard to data transfer between server and client, commonly includes window transit time, average delay, arrival rate of expected messages, state of a queue, and threshold specifics.

It would have been inherent to include these specifics in Kalra because these specifics are common profile issues with regard to data transfer between server and client.

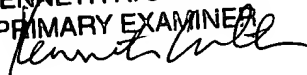
6.3 Regarding claims 38 – 103, the rejection of claims 16 – 37 under 35 USC 102(a) (paragraphs 6.1 and 6.2 above) applies fully.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth R Coulter whose telephone number is 703 305-8447. The examiner can normally be reached on 5 4 9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 703 305-4003. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KENNETH R. COULTER  
PRIMARY EXAMINER  


krc